

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

March 22, 1993
AO-93-06

Christienne Boisvert
Director of Finance
Harshbarger Committee
Box 9042
Boston, MA 02114

Re: Charitable Donation by Constitutional
Committee

Dear Ms. Boisvert:

This letter is in response to your December 15, 1992, letter requesting an advisory opinion as to whether the Harshbarger Committee ("Committee") may make a contribution to the Massachusetts Women's Political Caucus Education Fund ("Education Fund").

In your letter you stated that the Committee was recently solicited by the Massachusetts Women's Political Caucus ("MWPC") to make a contribution to the Education Fund. You stated that it appeared that the Education Fund did not make contributions to candidates and merely provided political training and education to interested people. You assumed that the Committee would not be able to contribute to the MWPC's Political Action Committee ("MWPC PAC") because the MWPC PAC makes contributions to political candidates.

You have asked 1) whether you were correct in your assumption that the Committee may not make a contribution to the MWPC PAC and 2) whether the Committee may make a charitable contribution to the Education Fund.

As a preliminary matter, I note that the Office of Campaign and Political Finance ("OCPF") considers the contemplated "contribution" referred to in your letter to be a "charitable contribution" as opposed to a "political contribution", as each has extremely different statutory and legal meanings. Thus, to avoid possible confusion, it is important to distinguish and clarify their respective meanings. The statutory definition of "contribution" (when used in the context of political contributions) includes payments or transfers of money or anything of value which is used for the purpose of influencing the nomination or election of a

candidate or to promote or oppose a question to the voters. See M.G.L. c.55, s.1. According to Massachusetts regulations, "charitable contributions" are considered expenditures. See 970 CMR 2.05.¹ To avoid confusion, I will refer to expenditures by political committees for charitable purposes as a "donation" or "charitable donation."

Question 1: Is your assumption that the Committee may not make a contribution to the MWPC PAC, correct?

M.G.L. c.55, s.6 provides, in pertinent part:

A political committee organized or operating on behalf of a candidate for . . . attorney general . . . may receive, pay and expend money or other things of value for reasonable and necessary expenses directly related to the campaign of such a candidate but shall not make any expenditure that is primarily for the candidate's or any other person's personal use; provided, however, that no such committee may contribute to any other political committee or to the campaign fund of any other candidate . . . (emphasis added).

Consistent with section 6, you are correct in concluding that the Committee may not contribute to the MWPC PAC. However, your reasoning (since the MWPC PAC makes contributions to political candidates) is not entirely correct. The reason the Committee may not contribute to the MWPC PAC is because the law expressly prohibits political committees, organized on behalf of constitutional candidates, from contributing to any other political committee, such as the MWPC PAC.

1. In order to make a charitable donation, a political committee must comply with the five prong test of 970 CMR 2.05 (2)(w): 1) The donation is made to an entity which is subject to either M.G.L. c.12, s.8(f), M.G.L. c.67 or M.G.L. c.180; 2) Neither the candidate, treasurer, or any official of the political committee is a trustee, officer, principal or beneficiary or involved in any manner in the operations of said entity; 3) Neither the candidate, treasurer, nor any official of the political committee is related by consanguinity or affinity to any trustee, officer, principal or beneficiary of said entity; 4) Making such charitable donations is a usual and customary practice of that political committee; and 5) The candidate or political committee will receive publicity and foster political good will towards a particular campaign as a result of making the donation.

Question 2: May the Committee make a charitable donation to the Education Fund?

This answer to this question turns on whether the Education Fund is a political committee. Section 1 of M.G.L. c.55, the campaign finance law, defines a "political committee" as:

. . . . any committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . . or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters.

The longstanding and consistent position of OCPF has been that, if an organization solicits or receives any money or other thing of value for political purposes,² the organization is functioning as a political committee, subject to the pertinent provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other thing of value. OCPF has further advised that an organization, which is neither soliciting nor receiving contributions for political purposes, but which is making expenditures for such purposes, will be "treated as a political committee in certain respects only if its political expenditures are more than incidental (emphasis added)." See OCPF-IB-88-01 (formerly IB-105).

Political expenditures by an organization will be considered more than incidental if they (1) are for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party and (2) exceed, in aggregate, in a calendar year, either ten percent (10%) of such organization's gross revenues for the previous calendar year, or fifteen thousand dollars (\$15,000), which ever is less (the "incidental threshold").

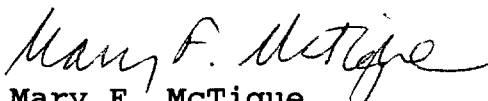
2. In the instant context, "political purpose" relates to receiving contributions or making expenditures for the purpose of influencing the nomination or election of a candidate or for the purpose of opposing or promoting a question submitted to the voters. See M.G.L. c.55, s.1 (definition of political committee) and IB-92-01 (explaining political purpose as relates to section 13).

Thus, if the Education Fund does not solicit or receive money or other things of value for political purposes and does not make contributions which exceed the incidental threshold, it is this office's opinion that the Committee may make a charitable donation to the Education Fund, provided such donation is consistent with 970 CMR 2.05(2)(w). Conversely, if the Education Fund makes political contributions which exceed the incidental threshold, this office would treat the Education Fund as a political committee for the purpose of receiving money or other things of value from political committees. Therefore, it could not receive a donation from a constitutional candidate's committee, since such a donation would be treated as a contribution to a political committee.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact OCPF should you have additional questions about this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director